

FILED  
U.S. Bankruptcy Court  
Western District of Washington  
at Seattle

APR 16 2010  
(WIB)

U.S. Bankruptcy Court

The Honorable Samuel J. Steiner  
Chapter 11  
Hearing Date: April 16, 2010  
Hearing Time: 10:00 a.m.  
Response Date: April 9, 2010

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

In re:	)	No. 09-10188-SJS
LAWRENCE KATES,	)	No. 09-17084-SJS
Debtor.	)	
_____		)
In re:	)	ORDER CONFIRMING PLAN
HILLSIDE BALBOA, LLC	)	
Debtor.	)	
_____		)

THIS MATTER having come on for hearing on April 16, 2010 before the undersigned Judge on confirmation of the Debtor's First Amended Plan of Reorganization dated as of February 12, 2010 (the "Plan"); and the Court previously having entered an Order Approving Disclosure Statement and Setting Hearing on Confirmation (the "Order"); and a copy of said Order and the Disclosure Statement and Plan having been transmitted to the holders of claims and interests; and the Debtor having appeared by and through its counsel, Graham & Dunn PC; and the Debtor having submitted evidence in support of confirmation of the Plan via the Declaration of Lawrence Kates in Support of Plan Confirmation; and the Court having considered the files, records, and testimony presented in connection with the Plan, the Court makes the following findings:

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**Findings**

1. The Debtor filed a voluntary petition pursuant to Chapter 11 of the United States Bankruptcy Code (the "Code") on January 9, 2010.

2. The Debtor originally filed the Plan with the Court on September 11, 2009 (Dkt. #158). A true and correct copy of the Plan, as modified and transmitted to all creditors and parties in interest as Exhibit A to the Court-approved Debtor's First Amended Disclosure Statement (Dkt. #249), is attached to this Order.

3. Notice of this hearing on confirmation was given to creditors and parties in interest in accordance with Federal Rule of Bankruptcy Procedure 2002 and notice of this proceeding was otherwise adequate.

4. The Plan complies with the applicable provisions of Chapter 11 of the Code.

5. The proponent of the Plan complies with the applicable provisions of the Code.

6. The Plan has been proposed in good faith and not by any means forbidden by law.

7. A. Any payment made or promised by the Debtor for services or for costs and expenses in, or in connection with, the bankruptcy case, or in connection with the Plan and incident to the case, has been disclosed to the Court; and

B. Any such payment made before confirmation of the Plan is reasonable; or if such payment is to be fixed after confirmation of the Plan, such payment is subject to the approval of the Court as reasonable.

8. A. The proponent of the Plan has disclosed the identity and affiliations of any individuals proposed to serve, after confirmation of the Plan, as a director, officer, or voting trustee of the Debtor, an affiliate of the Debtor participating in a joint plan with the Debtor, or a

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1 successor to the Debtor under the Plan; and the appointment to, or continuance in, such office of  
2 such individual is consistent with the interests of creditors and equity security holders and with  
3 public policy; and  
4

5 B. The proponent of the Plan has disclosed the identity of any insider that will be  
6 employed or retained by the reorganized Debtor, and the nature of any compensation for such  
7 insiders.

8 9. There are no regulatory commissions with jurisdiction, after confirmation of the Plan,  
9 over the rates of the Debtor.

10 10. With respect to each impaired class of creditors or interests:

11 A. Each holder of an allowed claim or interest of such class has accepted the Plan; or  
12 will receive or retain under the Plan on account of such claim or interest property of a value, as of  
13 the effective date of the Plan, that is not less than the amount that that holder would so receive or  
14 retain if the Debtor were liquidated under Chapter 7; or  
15

16 B. If §1111(b)(2) of the Code applies to the claims of such class, each holder of a  
17 claim of such class will receive or retain under the Plan on account of such claim property of a  
18 value, as of the effective date of the Plan, that is not less than the value of such creditor's interest  
19 in the estate's interest in the property that secures such claims.  
20

21 11. With respect to each class, such class has accepted the Plan or such class is not  
22 impaired under the Plan and is thus deemed to have accepted the Plan pursuant to §1126(f).

23 12. Except to the extent that the holder of a particular claim has agreed to a different  
24 treatment of such claim, the Plan provides that:  
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1           A       With respect to a claim of a kind specified in §§507(a)(1) or 507(a)(2) of the  
2 Code, on the effective date of the Plan, the holder of such claim will receive on account of such  
3 claim cash equal to the allowed amount of such claim, unless otherwise mutually agreed;

4           B.       With respect to a class of claims of the kind specified in §§507(a)(3)-(7) of the  
5 Code, each holder of a claim of such class will receive, if such class has accepted the Plan,  
6 deferred cash payments of a value, as of the effective date of the Plan, equal to the allowed  
7 amount of such claim; or, if such class has not accepted the Plan, cash on the effective date of the  
8 Plan equal to the allowed amount of such claims; and

9           C.       With respect to a claim of a kind specified in §507(a)(8) of the Code, the holder of  
10 such claim will receive on account of such claim deferred cash payments over a period not  
11 exceeding five years after the date of assessment of such claim, or a value, as of the effective date  
12 of the Plan, equal to the allowed amount of such claim.

13           13. At least one impaired class of claims has accepted the Plan, determined without  
14 including any acceptance of the Plan by an insider holding the claim of such class.

15           14. Confirmation of the Plan is not likely to be followed by the liquidation, or the need  
16 for further financial reorganization of the debtor or any successor of the debtor under the Plan  
17 unless its liquidation or reorganization is proposed in the Plan.

18           15. All fees payable under §1930 of title 28, as determined by the Court at the hearing on  
19 confirmation of the Plan, have been paid or the Plan provides for the payment of all such fees on  
20 the effective date of the Plan.

21           16. Notwithstanding paragraph 11 of this Order, above, the Plan also satisfies the  
22 confirmation requirements of Bankruptcy Code §1129(b).  
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1 17. In response to objections to confirmation filed by BAC Home Loans Servicing LP  
2 f/k/a Countrywide Home Loans, Inc. (Dkt. #267; "Countrywide"); the United States Internal  
3 Revenue Service (Dkt. #266; "IRS"); and First Citizen's Bank & Trust Company (Dkt. #260;  
4 "First Citizen's"), the Debtor agreed to modify the Plan to include certain provisions (set forth  
5 below), upon approval of which the objecting creditors would withdraw their objections and  
6 support Plan confirmation.  
7

8 18. In response to inquiry by the Committee, the Plan will include a provision  
9 denominated "Projected Recovery of Avoidable Transfers" contained in the Disclosure Statement  
10 (p. 11). This provision was negotiated, approved, and included in the Disclosure Statement but  
11 was inadvertently omitted from the Plan.  
12

13 19. All objections to Plan confirmation have either been withdrawn or overruled.  
14

15 **Order**

16 BASED ON THE FOREGOING FINDINGS, now therefore it is

17 ORDERED as follows:

18 1. The Debtor's First Amended Plan of Reorganization, a copy of which is attached  
19 hereto as Exhibit A and incorporated herein by this reference, is hereby confirmed and the Debtor  
20 is authorized and directed to carry out the terms and intent of said Plan. (The confirmed Plan  
21 constitutes the Plan proposed in Case No. 09-10188-SJS and does not constitute a plan proposed  
22 or confirmed in the administratively consolidated case of *In re Hillside Balboa, LLC*, Case No.  
23 No. 09-17084-SJS.)

24 2. The Plan's treatment of Class 1 claims is amended to read as follows:

25 Class 1: All Allowed Claims in Class 1 shall be paid from the Assets or  
26 Proceeds in full in cash on the Effective Date; provided, however, that Allowed  
tax claims arising under Bankruptcy Code §507(a)(8) will be paid in full in not

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1 less than five (5) years, pursuant to Bankruptcy Code §1129(a)(9). All Class 1  
2 claims which become Allowed Claims after the Effective Date shall be paid from  
3 the Assets or Proceeds in full in cash within 15 business days after allowance;  
4 provided, however, that Allowed tax claims arising under Bankruptcy Code  
5 §507(a)(8) will be paid in full in not less than five (5) years, pursuant to  
6 Bankruptcy Code §1129(a)(9). In particular, the Allowed Class 1 claim of the  
7 Internal Revenue Service (the "IRS Claim") shall be paid as follows: a) the IRS  
8 Claim shall be paid in full; b) the IRS Claim shall include interest to be paid at the  
9 rate prescribed by 26 U.S.C. Section 6621; c) the IRS Claim shall not be  
10 discharged until paid in full; d) the IRS Claim shall include claims arising from  
11 the Debtor's capital gains and the Plan Administrator shall reserve proceeds of the  
12 sales of Estate Assets in amounts adequate to satisfy such capital gains  
13 obligations; e) the IRS Claim shall be paid at a rate of \$4,356.67 per month  
14 commencing on May 12, 2010 and continuing on the 12<sup>th</sup> day of every month for  
15 the next 43 months thereafter until paid in full (including in the final payment all  
16 accrued but unpaid interest), provided that the IRS claim may at any time be  
17 sooner paid in such higher installment amount(s) as the Plan Administrator may  
18 elect or as may be required to ensure that payment of the IRS Claim is being  
19 treated in a manner not less favorable than the most favored nonpriority unsecured  
20 claim provided for by the Plan (excepting payments made to Class 4 creditors);  
21 and f) in the event the reorganized Debtor defaults in his payment obligations to  
22 the IRS under the Plan and such default is not cured within thirty (30) days after  
23 notice to the Plan Administrator, the IRS may pursue any state or federal  
24 collection remedies provided by applicable law that the IRS may deem  
25 appropriate. Additionally, for purposes of clarification, the IRS' right to payment  
26 of a tax claim arising from any capital gain on the postpetition sale of Estate  
Assets shall be an expense of administration and not an "Allowed Class 1" claim.

3. The Plan's treatment of the Class 2 claim of BAC Home Loans Servicing LP f/k/a  
Countrywide Home Loans, Inc. is amended to read as follows:

Class 2 (Countrywide Funding, n/k/a Bank of America Home Loans): The  
Class 2 claimant's claim is secured by real property commonly known as 229  
Marine Drive, Point Roberts, Washington (the "Property"). The Class 2 claimant  
will retain its security interests in the Property. To the extent its claim has not  
been satisfied prior to the Effective Date, the Class 2 claimant shall be treated as  
follows: 1) commencing with the Effective Date, the Debtor will make on-going  
monthly payments at the normal (non-default) contract rate; 2) not later than the  
date that is 18 months after the Effective Date the Debtor will either: a) sell the  
Property; b) surrender the Property to Countrywide; or c) cure and reinstate the  
Class 2 claimant's loan pursuant to Bankruptcy Code §1124; and 3) the Debtor  
agrees that there will be no subdivision of the Property without permission in  
writing from Countrywide.

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1           4.       The following provisions shall be added to the Plan's treatment of the "Effect of  
2 Confirmation":

3                   **Property of Entities:** Notwithstanding anything in this Plan or in the  
4 Agreement for Plan Administration to the contrary, the property and assets owned  
5 by the Entities themselves, (as differentiated from the Manager's personal  
6 membership interests in the Entities) are not property and assets of the Manager's  
7 bankruptcy Estate. Therefore, neither the Plan nor the Agreement for Plan  
8 Administration (nor the automatic stay imposed by the Plan): (A) has any  
9 prohibitive effect on the ability of Entity creditors to take actions directly against  
10 the Entities or any real or personal property owned by the Entities pursuant to loan  
11 documents or security instruments executed by the Entity, and/or applicable non-  
12 bankruptcy law, or (B) invalidate, impair, limit, restrict, or otherwise affect the  
13 terms or enforceability of any existing loan documents, security instruments,  
14 agreements or contracts between an Entity and its creditors (to include but not be  
15 limited to mortgages, deeds of trust, assignments for security purposes and  
16 financing statements), or (C) give the Plan Administrator, the Post-Confirmation  
17 Committee, or the Debtor any rights or powers to demand prior or subsequent  
18 review, approval of, or consent to, any demands, actions, remedies or proceedings  
19 against any of the Entity or the Entity's real or personal property by any of the  
20 creditors thereof, or any transfers of real or personal property resulting therefrom.

21                   Nothing contained in this Plan or in the Agreement for Plan  
22 Administration automatically or implicitly extends any of the terms and  
23 provisions of this Plan to cover, be applicable to, or protect any of the Entities or  
24 the property and assets owned by the Entities, from any actions or proceedings by  
25 any Creditor of an Entity. In the event that an Entity should seek relief in any  
26 Bankruptcy Court, any determinations respecting the applicability, modification  
of, or vacating the automatic stay as to the Entity or its property, and the  
proposal/confirmation of any plan of reorganization applicable to any such Entity  
or its creditors, must be adjudicated within the bankruptcy of such Entity  
according to usual and customary bankruptcy procedures, separate, distinct and  
apart from the provisions of this Plan and the Agreement for Plan Administration.

In the event the Plan Administrator files a bankruptcy on behalf of an  
Entity, the confirmation of this Plan and/or a vote in its favor is entirely without  
prejudice to the prompt objection in that bankruptcy by any creditor of the filing  
Entity claiming lack of authority to file without the concurrence of those  
authorized by the law of the state of organization of the Entity to make the filing  
decision.

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1           5. The following additional provision shall be added to the Plan's treatment of the  
2 "Effect of Confirmation":

3           The Plan Administrator will investigate and pursue recovery of (as he/she may  
4 determine): Avoidance Actions against the Debtor's insiders (potentially  
5 including transfers to family members, as set forth in the Debtor's Statement of  
6 Financial Affairs), including but not limited to unauthorized postpetition transfers  
7 pursuant to 11 U.S.C. §549. Avoidance Actions against non-insiders shall be  
8 waived.

9           6. The Plan Administrator designated in the Plan as "David Stapleton" shall be replaced  
10 by the "Stapleton Group, Inc."

11           7. The Plan and Paragraph 10 of the Management Agreement are modified to include the  
12 following provision (and to delete any provisions that are inconsistent therewith):

13           Subsequent to the Confirmation Date, the Plan Administrator shall be authorized  
14 to pay fees and expenses incurred post-Confirmation Date by the Plan  
15 Administrator and Professional Persons retained by the Plan Administrator.  
16 Copies of the monthly invoices for these fees and expenses shall be delivered to  
17 the Plan Administrator, the Post-Confirmation Committee, and the Debtor.  
18 Expenses and fees of the Plan Administrator and his Professional Persons may be  
19 paid without further notice or approval up to the amounts of, respectively,  
20 \$10,000 in fees in any given month for the Plan Administrator and \$5,000 in fees  
21 in any given month for the Plan Administrator's counsel. If the fees of the Plan  
22 Administrator exceed \$10,000 in any given month or if the fees of the Plan  
23 Administrator's counsel exceed \$5,000 in any given month (collectively, the  
24 "Excess Fee Amounts"), the Plan Administrator shall submit the Excess Fee  
25 Amount invoices to the Chairperson of the Post-Confirmation Committee and  
26 request that the Excess Fee Amounts be approved and paid from Estate Assets. If  
the Chairperson of the Post-Confirmation Committee fails to object within seven  
business days of receipt, the Plan Administrator may pay the fees as requested. If  
the Chairperson declines to approve the Excess Fee Amounts request, the Plan  
Administrator may submit the payment requests to the Bankruptcy Court for  
review and approval with at least ten days prior notice (and an opportunity to  
object) provided to the Post-Confirmation Committee and the Debtor. For cause  
shown, the Bankruptcy Court may revise the terms of this provision upon motion  
of the Plan Administrator, the Post-Confirmation Committee, or the Debtor.

8. The following provision shall be added to the Management Agreement as paragraph  
15:  
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1       **15. Estate Funds.** Following the Confirmation Date, Estate funds on deposit in  
2       the trust account of Graham & Dunn PC (U.S. funds) and in the Debtor's  
3       sequestered account at VanCity Savings Credit Union at 898 West Pender Street,  
4       Vancouver, British Columbia (Canadian funds) shall remain on deposit.  
5       Disbursement of Estate funds or transfer to other bank accounts of the Estate shall  
6       require the prior written or electronically transmitted consent of both the Plan  
7       Administrator and the Debtor.

8       9.       Notwithstanding any provision of this Order or the Plan or Management  
9       Agreement to the contrary, professional persons employed by the Plan Administrator,  
10       Debtor or Affiliated Entities shall be entitled to obtain compensation from the Estate for  
11       services rendered to, or for the benefit of, the Estate that do not directly involve the Plan  
12       Administrator's sale or final disposition of Estate Assets as contemplated by the  
13       Management Agreement. Such compensable services shall include services rendered on  
14       behalf of the Affiliated Entities and all services provided in the administration of the  
15       Estate and Plan, as such services would be provided pursuant to the normal and  
16       customary requirements of the Bankruptcy Code. The provisions of paragraph 7 of this  
17       Order shall not apply to limit the amount of any such request for compensation. The  
18       Bankruptcy Court shall hear and approve any such request for compensation.

19       10.       Nothing in this Order shall prohibit the Plan Administrator from seeking  
20       supplemental clarification of, and additional, terms respecting his duties and protections  
21       under the Management Agreement. The appointment of the Plan Administrator under the  
22       Plan shall be effective upon the later of the Effective Date or such date as the Bankruptcy  
23       Court determines and approves such supplemental terms, which determination the Plan  
24       Administrator may seek on shortened time.  
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1 11. If inconsistent with the terms of the Plan, the provisions of this Order shall  
2 control.

3 DATED this 16 day of April, 2010.

4   
5 U.S. BANKRUPTCY JUDGE

6 Presented by:

7 GRAHAM & DUNN PC

8 By /s/Mark D. Northrup

9 Mark D. Northrup

10 WSBA# 16947

11 Email: mnorthrup@grahamdunn.com

12 Attorneys for the Debtor  
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